

**Chesapeake Bay Local Assistance Board
Monday, June 15, 2009
The State Capitol, Richmond, Virginia**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chair
William E. Duncanson, Vice Chair
Gregory C. Evans
Beverly D. Harper
Barry L. Marten
Rebecca Reed
Richard B. Taylor
Charles B. Whitehurst

Chesapeake Bay Local Assistance Board Members Not Present

John J. Zeugner

DCR Staff Present

Joseph H. Maroon, Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
David Sacks, Assistant Director, Division of Chesapeake Bay Local Assistance
David C. Dowling, Director of Policy Planning and Budget
Adrienne Kotula, Principal Environmental Planner
Ryan J. Brown, Assistant Director of Policy and Planning
Michael R. Fletcher, Board and Constituent Services Liaison
Daniel Moore, Principal Environmental Planner
Nancy Miller, Senior Environmental Planner
Shawn Smith, Principal Environmental Planner
Melissa Doss, Senior Environmental Planner
V'lent Lassiter, Senior Environmental Planner
Elizabeth Andrews, Office of the Attorney General
Pam Denholm, Office of the Attorney General

Others Present

Bob Fink, Westmoreland County
Joe Hatch, City of Petersburg
Bob Steidel, City of Richmond
Kevin Utt, City of Fredericksburg

Call to Order

Chairman Davis called the meeting to order and asked for the calling of the roll. A quorum was declared present.

Consideration of Minutes

MOTION: Mr. Evans moved that the minutes from the March 23, 2009 Board Meeting and the May 12, 2009 Southern Area Review Committee Meeting be approved as submitted.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Director's Report

Mr. Maroon gave the Director's report.

Mr. Maroon updated the Board regarding progress on the Chesapeake Bay. He said that the Bay area of Virginia covers approximately 60% of the land mass of the Commonwealth. He said that the Bay continues to be the number one environmental concern in the minds of the public. He reviewed the following milestones:

Chesapeake Bay Milestones, TMDL, Presidential Order

- EPA Bay Barometer (March 2009): 38 out of 100
- EPA developing Baywide TMDL
- Two-Year Milestones: Adopted May 2009 by Bay Governors; end date "no later than 2025"
- VA Milestones for 2009-2011: 86% additional N reduction and 52% P reduction; significant gap to close
- Presidential Order: first action since Reagan; strengthens federal role

Mr. Maroon said that he and Mr. Frye had participated in a meeting of Bay Governors held at Mt. Vernon. Governor Kaine is the current chair of the Bay Executive Committee. He said there was a sense of progress, but that the numbers were not where they should be.

Mr. Maroon said that the Bay TMDL will be more aggressive and different than any in the country. Governor Kaine and the Bay State Governors have adopted a series of two-year milestones. It was agreed that the end date of these two-year milestones would be

not later than 2025. By that time, various states will have in place the required reduction strategies. That does not mean that the Bay will have yet responded to those strategies.

The two year strategies for Nitrogen and Phosphorus Reduction are:

Virginia's 2011 milestone commitment is reduce nitrogen by 3.39 million pounds over the three year period (2009-2011).

Virginia's 2011 milestone commitment is to reduce phosphorus by 470,000 pounds over the three year period (2009-2011).

Mr. Maroon said that the EPA is looking closely at the consequences and that states expect to hear the consequences if those milestones are not met. He said this represents a substantial change in the work to clean up the Bay.

Mr. Maroon said that the Commonwealth had been under the Chesapeake Bay Preservation Act for 20 years. He said that there was a provision related to agriculture's compliance with the Bay Act but that had not been adequately enforced by the prior CBLAD because of funding. He said that in recent meetings DCR has determined that perhaps two out of 26 Soil and Water Conservation Districts in the Bay Watershed are still involved. He said that DCR is going to try to get a better handle on this and on what might be done.

Mr. Evans asked if Virginia had been given EPA approval to move ahead.

Mr. Maroon said that the Milestones were adopted by the Governors at the Bay Summit Meeting. EPA will consider whether or not states are meeting the requirements.

Mr. Maroon said that about 336,000 acres of the Governor's 400,000 land preservation goal had been met.

Mr. Maroon said that the proposed stormwater regulations have been approved by the Governor and will now go out for public comment. Five public hearings will be held in June and July.

Mr. Maroon said that due to language in the Appropriations Act, the agency would no longer be able to pay member per diem for Board attendance. Expense reimbursement will continue.

Mr. Davis asked about the implementation schedule for the revised stormwater regulations.

Mr. Maroon said that the public comment period would close in August and the hope would be to take the regulations back to the Soil and Water Conservation Board by mid-Fall. The hope is that the Board would adopt the revisions and the regulations would go on to the Governor for signature.

However, even if Governor Kaine signs the regulations, the law says that they may not go into effect until July 1, 2010. He said that DCR would be looking at 2012 before some of the programs were operational in a number of jurisdictions.

Quarterly Performance Indicators

Mr. Sacks reviewed the Quarterly Performance Indicators.

As of March 23, 2009:

Localities Found Compliant: 62

Localities Addressing Compliance Conditions: 21

Expected Status as of June, 2009:

Localities Phase I Consistent: 84

Phase II Consistent: 84

Compliance Reviews Completed: 83

Localities Compliant: 68

Localities Noncompliant: 1

Localities Addressing Compliance Conditions: 15

Compliance Reviews in Progress: 1

Local Program Compliance Evaluation

Towns of Bloxom, Melfa and Saxis

Ms. Smith presented the reports for the Towns of Bloxom, Melfa and Saxis. There was no one present from the towns.

All three towns had the same compliance condition. The condition required the Towns to adopt a formal agreement with Accomack County to outline roles and responsibilities for Bay Act program implementation. All three towns approved their MOUs and in each case, the Accomack County Board of Supervisors approved it as well.

Ms. Smith said that based on these actions, the staff recommendation was that the implementation of the Town of Bloxom's, Melfa's and Saxis' Phase I programs be found compliant.

MOTION: Mr. Taylor moved that that the Chesapeake Bay Local Assistance Board find that the implementation of the Phase I program for the Towns of Bloxom , Melfa and Saxis to be compliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst
DISCUSSION: None
VOTE: Motion carried unanimously

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 15, 2009**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF BLOXOM**

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 23, 2009, the Chesapeake Bay Local Assistance Board found that implementation of a certain aspect of the Town of Bloxom' Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than April 15, 2009; and

WHEREAS on February 26 2009, the Town took action to address the condition from the March 23, 2009 Board resolution; and

WHEREAS on May 12, 2009, members of the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation the Town of Bloxom's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 15, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 15, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

TOWN OF MELFA

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of a certain aspect of the Town of Melfa's Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than December 31, 2008; and

WHEREAS the Town did not take action to address the condition from the March 17, 2008 compliance evaluation by the compliance deadline of December 31, 2008; and

WHEREAS on March 23, 2009, the Chesapeake Bay Local Assistance Board found that implementation of a certain aspect of the Town of Melfa's Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than April 15, 2009; and

WHEREAS in April 2009, the Town and Accomack County approved an MOU to address the condition; and

WHEREAS on May 12, 2009, members of the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation the Town of Melfa's Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 15, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 15, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
TOWN OF SAXIS

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of a certain aspect of the Town of Saxis' Phase I program did not fully comply with the Act and Regulations and further that the Town address the one recommended condition in the staff report no later than December 31, 2008; and

WHEREAS on January 2, 2009, the Town took action to address the condition from the March 17, 2008 compliance evaluation; and

WHEREAS on May 12, 2009, members of the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation the Town of Saxis' Phase I program complies with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 15, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Virginia Beach

Ms. Smith presented the report from the City of Virginia Beach. There was no one present from the City.

The City's original compliance evaluation was undertaken in June 2007 and the Board established June 30, 2008 as the deadline for addressing 9 conditions. On September 15,

2007, the Board found that the city had addressed 8 of the 9 conditions, and granted an extension for this one remaining condition until December 31, 2008. The remaining condition required the City to ensure that pools were included in impervious cover calculations.

On April 28, 2009, the City Council adopted a revision to its Bay Act ordinance to address the condition. The revision makes it clear that the surface area of swimming pools is considered as impervious. In addition, the revisions include clarification on required buffer restoration standards for approved encroachments and shoreline erosion control projects.

Ms. Smith said that based on the adopted ordinance revision, staff opinion was that the City has addressed the condition and the staff recommendation was that the Review Committee find the City's implementation of its Phase I program is compliant.

MOTION: Mr. Whitehurst moved that the Chesapeake Bay Local Assistance Board find the implementation of the City of Virginia Beach's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 15, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

CITY OF VIRGINIA BEACH

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 23, 2009, the Chesapeake Bay Local Assistance Board found that implementation of the City of Virginia Beach's Phase I program was noncompliant with the Act and Regulations and further that the City address the recommended condition in the staff report no later than April 30, 2009; and

WHEREAS in April 2009, the City provided staff with information relating to the City's actions to address the recommended condition which was evaluated in a staff report; and

WHEREAS on May 12, 2009, members of the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the City of Virginia Beach's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 15, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Richmond

Ms. Smith gave the report for the City of Richmond. She introduced Mr. Bob Steidel from the City.

The City of Richmond's compliance evaluation was undertaken by the Board on December 10, 2007. The Board found the City's implementation of its Phase I program to not fully comply and set out 8 conditions for compliance along with a deadline of December 31, 2008. The City Council adopted a revised Bay Act ordinance on March 9, 2009, and the adopted ordinance and revised Public Information Manual have been

provided to staff.

The eight conditions were as follows:

- Revise the Public Information Manual to be consistent with the City's Bay Act Ordinance and processes – completed and revised Manual is now in use
- Ensure all CBPAs are depicted on plats and site plans – completed by revising submission requirements in Public Information Manual and checked on approved plans and plats.
- Review shoreline erosion control projects and require WQIA for any land disturbance in the RPA buffer – revised forms and checklists clarifying WQIA requirements in revised Manual
- Address the issues identified in the ESC Corrective Action Agreement –City's program is currently consistent.
- Adopt the 100 percent reserve requirement, or approved alternative – completed by adopted Bay Act ordinance amendments.
- Develop a program to ensure the regular or periodic maintenance and tracking of all water quality BMPs – revised Manual includes BMP maintenance agreement form and City also provides the Department with an annual inventory of all structural BMPs and their inspection and maintenance activities as part of their MS4 permit requirements.
- Ensure that BMP design and allowable pollutant removal efficiencies are in accordance with the Virginia Stormwater Management Handbook – Manual was revised and now refers to the removal efficiencies and BMP designs as outlined in the Stormwater Handbook. City staff began requiring conformance with the Handbook several months before the Manual revision.
- Require an on-site evaluation to identify water bodies with perennial flow – City staff routinely request assistance from the Department to verify onsite water body assessments.

Ms. Smith said that based on these actions, staff opinion was that the City has addressed all eight compliance conditions, and staff recommended that the Board find that the implementation of the City's Phase I program be found compliant.

MOTION: Mr. Marten moved that the Chesapeake Bay Local Assistance Board find the implementation of the City of Richmond's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

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SECOND: Mr. Whitehurst
DISCUSSION: None
VOTE: Motion carried unanimously

Mr. Steidel said that he appreciated the opportunity to work with DCR staff.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 15, 2009**

RESOLUTION

**LOCAL PROGRAM COMPLIANCE EVALUATION
CITY OF RICHMOND**

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on December 10, 2007, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Richmond's Phase I program did not fully comply with the Act and Regulations and further that the City address the eight recommended conditions in the staff report no later than December 31, 2008; and

WHEREAS in February and March 2009, the City provided staff with information relating to the City's actions to address the eight recommended conditions which was evaluated in a staff report; and

WHEREAS on May 12, 2009, members of the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

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WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the City of Richmond's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 15, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Fredericksburg

Ms. Kotula presented the report for the City of Fredericksburg. Kevin Utt from the City was present.

In March of 2008, the CBLAB found that the City of Fredericksburg's implementation of its Phase I program did not fully comply with the Act and Regulations, and established a deadline of March 31, 2009 for the City to address 6 conditions.

- The first Condition relates to compliance with erosion and sediment control regulations. At the time of the initial Compliance Evaluation, the City of Fredericksburg had a Corrective Action Agreement with the Soil & Water Conservation Board in order to bring their erosion and sediment control program into compliance. The City has addressed all of the issues that were detailed within the Corrective Action Agreement and was found consistent by the Soil & Water Conservation Board on September 24, 2008. Thus, this condition has been addressed.
- The second condition required the City to revise their ordinance to include the requirement for a 100% reserve drainfield for septic systems within CBPAs. On May 27, 2008 City Council approved an ordinance revision that incorporated the required language and City staff has revised the plan review process to ensure that this requirement is met.
- Conditions 3, 4 & 5 all relate to stormwater and BMP requirements. The Compliance Evaluation plan reviews and site visits revealed that proper

stormwater calculations, 'proper BMP design and siting' and 'proper BMP tracking and maintenance' were not being consistently required for all development within the City. The City is addressing these conditions by requiring stormwater calculations and BMP information on all plan submittals. The City has also established a BMP maintenance agreement program that tracks all information. All of this information was verified by staff and thus, this condition has been addressed.

- The final condition relates to the requirement for site-specific evaluations to identify water bodies with perennial flow. The original plan reviews and site visits revealed that the City had not been consistently requiring these evaluations. The City now has staff on board that will be able to assist with these issues in the future and City staff has started to use the assistance of Division staff in making site specific determinations. Ms. Kotula said that based on this information, staff opinion was that this condition has been addressed.

Ms. Kotula said that staff believed that the City has properly addressed the six original conditions and therefore recommended that the City be found compliant.

Mr. Utt said that he appreciated working with the DCR staff.

MOTION: Ms. Reed moved that the Chesapeake Bay Local Assistance Board find the implementation of the City of Fredericksburg's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 15, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

CITY OF FREDERICKSBURG

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake

Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of the City of Fredericksburg's Phase I program did not fully comply with the Act and Regulations and further that the City address the six recommended conditions in the staff report no later than March 31, 2009; and

WHEREAS in the Spring of 2009, the City provided staff with information relating to the City's actions to address the six conditions which were evaluated in a staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of the City of Fredericksburg's Phase I program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 15, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Westmoreland County

Ms. Lassiter gave the report for Westmoreland County. She recognized Bob Fink from the County.

On March 17, 2008, the CBLAB found that Westmoreland County's implementation of its Phase I program did not comply with the Act and Regulations, and established a deadline of March 31, 2009 for the County to address 5 conditions. The Department has

conducted a compliance evaluation condition review, and determined 4 of the 5 recommendations have been adequately addressed.

The first condition requires that the County document submission of WQIAs. The County has been requiring the submission of WQIAs since January 1, 2009 for all proposed encroachments into the RPA. They have also created several WQIA forms to accommodate different types of development. These include WQIAs for House Additions, Redevelopment, Roads and Drives, Single Family Homes, and Wetlands projects. Based on these actions, staff opinion was that this condition has been met.

The second condition states that the County's erosion and sediment control program address the issues identified in the 2008 Corrective Action Agreement. The County's final compliance check was held on March 25, 2009 and the County's program was reviewed by the VA Soil & Water Conservation Board on May 28, 2009. The Soil & Water Conservation Board granted the County an extension until November 19, 2009 to meet 3 conditions that have not yet been resolved. Therefore, this condition is still outstanding.

The third condition requires that the County develop and implement a five-year septic system pump-out and inspection program. The County consists of 4 election districts, and the County intends to notify one district per year. All subsequent mailings will be sent out 5 years after the last pump-out for each individual lot. One district has been notified, with 4,111 letters sent in 4 batches from June through December of 2008. Based on these actions, staff was opinion that this condition has been met.

The fourth condition states that the County develop a program to track BMP installation, inspection, and maintenance. The County has finalized a BMP Maintenance Agreement and has created a BMP Tracking database that is populated with 28 BMPs so far. Based on these actions, it is staff opinion was that this condition has been met.

The fifth condition concerns the removal of vegetation in the RPA buffer. The removal of dead, dying or diseased trees must be approved by a representative from the Land Use Administration office, and for all new construction, every tree must be shown on the site plan. Furthermore, before granting a building permit for any activity within the RPA, the County is requiring that applicants submit an RPA re-vegetation plan that includes woody vegetation. Based on these actions, staff opinion was that this condition has been met.

Ms. Lassiter said that Westmoreland has made significant improvements to their Bay Act program. While the County has addressed 4 of the 5 conditions required by the Board within the assigned deadline, because of the remaining issue with the erosion and sediment control Corrective Action Agreement, she said that the staff recommendation was that the Board find the County's Phase I program not fully compliant with the Act and Regulations, and that the County undertake and complete the three outstanding conditions specified in the Corrective Action Agreement in accordance with the deadlines and requirements established by the VA Soil and Water Conservation Board.

Mr. Evans asked what the requirements were from the Soil and Water Conservation Board.

Mr. Fink said those requirements dealt with inspections, including deadlines and thorough notes. The third dealt with the adequacy of the inspection.

Mr. Evans asked if Mr. Fink anticipated a problem with coming into compliance by November 19.

Mr. Fink said that would not be a problem.

MOTION: Ms. Reed moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Westmoreland County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, Westmoreland County be directed to undertake and complete Board Condition #2 contained in the staff report in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 15, 2009

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
WESTMORELAND COUNTY

Local Compliance Evaluation – Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

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WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in September, 2007, the Department of Conservation and Recreation conducted a compliance evaluation of Westmoreland's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on March 17, 2008, the Chesapeake Bay Local Assistance Board found that implementation of certain aspects of Westmoreland County's Phase I program did not fully comply with the Act and Regulations and further that the County address the five recommended conditions in the staff report no later than March 31, 2009; and

WHEREAS in the Spring of 2008, the County provided staff with information relating to the County's actions to address the five conditions which were evaluated in a staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Westmoreland County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Westmoreland County to undertake and complete Board Condition #2 contained in the staff report in accordance with the deadlines and requirements established by the Virginia Soil and Water Conservation Board.

1. For compliance with § 9 VAC 10-20-120 6 of the Regulations, the County's erosion and sediment control program must address the issues identified in the 2008 Corrective Action Agreement.

THEREFORE BE IT RESOLVED that failure by Westmoreland County to meet the deadlines and requirements established by the Virginia Soil and Water Conservation Board will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject Westmoreland County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 15, 2009 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Program Updates

City of Petersburg

Ms. Doss gave the program update for the City of Petersburg. She recognized Mr. Hatch from the City.

Located 20 miles south of Richmond across the Appomattox River and at the junction of Interstates 95 and 85 is the city of Petersburg. Approximately two-thirds of the city is located in the Chesapeake Bay drainage area. Residential and commercial development in the City is limited to primarily redevelopment and infill.

The Compliance Evaluation was conducted throughout 2008 and the process revealed nine program elements that were not fully compliant with the Act and the Regulations. At the meeting on March 23, 2009, nine conditions were given to the City to get them back on track.

Condition number 7 was given a deadline in accordance with deadlines and requirements of the Virginia Soil and Water Conservation Board. Condition 8 was given a deadline of March 31st, 2010. The remaining 7 conditions were to be addressed immediately with a deadline of March 24, 2009.

The first three conditions are generally related to the process undertaken by the City for reviewing building permit applications. These conditions require the City to screen applications for whether they are in CBPAs, ensure CBPAs are shown on plans, and consistently require site specific evaluations when necessary. Initially, it did not appear the City was reviewing development plans for compliance with their Bay Act ordinance. Since the compliance evaluation, DCBLA staff has twice reviewed building permits and found there to be no requests in CBPAs. The zoning administrator has been consistently noting in the files whether or not CBPAs are present on the parcels. Staff found 14 examples of this. On the most recent visit, the Zoning Administrator provided a set of plans for Bank Street Apartments Phase II. This is the location of a redevelopment project located near the RMA, which showed proper water quality calculations. Ms. Doss said that staff opinion was that the City is making progress with these 3 conditions.

The fourth condition requires the City to document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. During the compliance evaluation, 2 files were discovered which did not have a WQIA in the file, when they clearly should have been required due to disturbance being proposed in the RPA. No land disturbance applications have been submitted since March 24, 2009. The

City has properly revised their letter regarding proposed development in the RPA requirements and mailed it to one landowner with inquiries.

Condition five requires the City to administer exceptions consistent with City code requirements. During the field investigation, it was determined at least three of the sites should have required an exception and did not. No exceptions requests have been made since March 24, 2009.

The sixth condition is that the City ensures all development and redevelopment properly addresses nonpoint source pollution. During the initial file review process, DCBLA staff was unable to determine if the City met the requirements for stormwater calculations because the files were not reviewed for Bay Act compliance. Upon DCBLA staff's last visit to the City, we reviewed plans of redevelopment for Bank Street Apartments, which is located near the RMA. The plans showed proper water quality calculations and that no BMP was necessary.

Condition seven states the City must address issues with their erosion and sediment control program that are identified in the 2008 Corrective Action Agreement. A review of the CAA was done on October 9, 2008 and the CAA completion date was extended to May 21, 2009. Soil and Water staff have not yet returned to complete evaluation.

Condition eight requires the City to develop and implement a 5-year septic pumpout & inspection program. Currently, the zoning administrator is working with the Utility department to document there are no septic tanks within the City.

Condition nine states the City must develop a program to track BMP installation, inspection, and maintenance. Although City staff has confirmed the presence of BMPs in the City CBPAs, they have stated that there is no system in place to ensure inspection and continued maintenance. After discussion with the City, DCBLA staff supplied the City with templates and guidance on how to implement the program. The zoning administrator is currently compiling a list of BMPs.

In sum, the City is demonstrating progress toward meeting the conditions, however, not enough time has elapsed to determine all of the conditions are being met. The staff recommendation was that the Board take no action on the nine conditions from the March 23, 2009 compliance evaluation.

Mr. Hatch said that the City was working on the outstanding issues and hoped soon to have them under control.

Ms. Harper asked about the City deadlines.

Ms. Doss said three deadlines were given. Condition number 7 was with the Soil and Water Conservation Board CAA with a May 21, 2009 deadline. The deadline for Condition 8 was March 31, 2010 for the five-year septic pumpout. The deadline for the remaining seven was March 24, 2009.

Mr. Davis noted that the Board met on March 23 and said the conditions were to be addressed immediately.

Ms. Doss noted that the actual motion said March 24, 2009.

Town of White Stone

Ms. Lassiter gave the program update for the Town of White Stone.

On December 15, 2008, the CBLAB found that the Town of White Stone's implementation of its Phase I program did not comply with the Act and Regulations, and established a deadline of December 31, 2009 for the Town to address 4 conditions. Three of the 4 conditions involved ordinance amendments.

The first condition states that all references to buffer area width reduction must be removed from White Stone's Chesapeake Bay Preservation Ordinance. The second condition related to the Town's ordinance states that Section 2-4 (d) of the ordinance, which allowed buffer equivalency calculations, must be deleted. The final condition related to the ordinance states that Section 7-2, which has to do with the Town's exception process, must be amended in three ways. First, it must be amended to require an exception process based upon review by a legislative or other body; second, it must list the six findings in the ordinance; and third, it must require public notice and a hearing prior to the granting of exceptions. On May 7, 2009, the Town Council adopted a revised ordinance in which each of these three conditions were met.

The final condition requires that the Town develop and implement a five-year septic pump-out program. Department staff attended White Stone's Town Council meeting on May 7, 2009 to explain the requirements of the septic pump-out provision and answer questions from Council members and the audience. After much lively discussion, the Town has agreed to implement this provision, and sample pump-out materials have been provided to the Town.

Ms. Lassiter said that staff opinion was that White Stone is demonstrating excellent progress towards meeting the 4 conditions identified during their Compliance Evaluation, and Department staff will continue to work closely with the Town to ensure adherence to the Town's Bay Act ordinance requirements.

Prince George County

Ms. Doss gave the program update for Prince George County.

On December 15 2008, the CBLAB found that Prince George County's implementation of its Phase I program did not fully comply with the Act and Regulations, and requested

they address five of the six conditions discussed by December 31, 2009, and submit the revised ordinance described in condition number two for March 2009 Board Review.

The first condition is that the County must revise its current Resource Protection Area and Resource Management Areas Map so that it accurately depicts all RMA features as described in the County's Chesapeake Bay Preservation Area Overlay District ordinance. The County's ordinance requires a 150' RMA and a whole lot provision, which means if any portion is in, then the regulations apply to the whole lot; however the current map shows incorrect dimensions of the RPA, only shows a 100' RMA, nor does the map include all of the required RPA and RMA features when compared with Virginia Geographic Information Systems maps. The County's GIS coordinator and Erosion and Control Specialist have begun to revise the maps.

The second condition requires that the County present the Phase I modifications to the Chesapeake Bay Local Assistance Board for review at the March of 2009 meeting. CBLA staff has received documentation that shows the County has repealed the ordinance containing Phase I modifications.

The third condition requires the County to document submission of a WQIA for any proposed land disturbance, development, or redevelopment within RPAs. The County has been provided the necessary forms and they are using them. DCR is in the process of working with the County on a violation discovered during the compliance evaluation. The County is requiring the landowner to submit a proper WQIA, which he is in the process of completing. This requirement is also now included when comments are provided on preliminary subdivision plats and site plans.

The fourth condition relates to BMP installation, inspection, tracking, and maintenance. They have reportedly given a BMP maintenance agreement to the County for review. The maintenance provisions for BMPs are now required to be stated on site plans.

The fifth condition has to do with properly showing the CBPAs on the plans submitted to the County. The subdivision ordinance requires them to be shown on all subdivision plats and the zoning ordinance requires them to be shown on all site plans.

Condition number six requires the County to administer exceptions consistent with County code requirements. They have been provided the proper forms and will be using them if necessary. The violation the County is in the process of dealing with has the option of submitting an exception request. Thus far, however, none have been submitted. County staff has received additional training and has developed a manual to assist with processing requests.

Ms. Doss said that staff opinion was that Prince George County is making significant progress toward meeting the 6 conditions identified during their compliance evaluation. Staff will continue to assist them with the further development of their program

Phase III Program Discussion

Mr. Sacks presented an overview of the Phase III Program Discussion from the Policy Committee Meeting. He said that the committee had recommended that the Board adopt the revised approach as presented by staff and as amended in discussion. A full presentation of the discussion is available from DCR and is also included in the minutes from the morning Policy Committee session.

Mr. Davis noted that the checklist had been provided for member review and that Mr. Sacks would review the proposed changes.

Mr. Taylor asked if there had been comments from the localities.

Mr. Sacks said that staff had been working on this and receiving comment for about an 18 month period.

Mr. Evans said that he supported going forward with this approach. He said that he remained concerned that there were no metrics for the measures, but that he understood this to be a fluid approach.

Ms. Reed concurred with Mr. Evans regarding the necessity of measurements.

Mr. Maroon said that the points were well taken. He said that even within the context of the Bay Milestones, DCR is bound by the legal and regulatory authority granted. He said it may necessitate seeking additional authority.

Mr. Davis said that he viewed the Checklist as a start to the process for Phase III that will evolve over time.

Mr. Duncanson said that the checklist does a lot of things that will help the localities and the Board.

MOTION: Mr. Taylor moved that the Chesapeake Bay Local Assistance Board authorize the Department of Conservation and Recreation to proceed with the Phase III approach as outlined in the staff report and presentation and to use the two Checklists as tools for advisory reviews of local codes.

SECOND: Mr. Whitehurst

DISCUSSION: None

VOTE: Motion carried unanimously

Consideration of Guidance Amendments

Ms. Smith gave an overview of requested changes to the Guidance Documents.

- Currently 11 Board adopted documents, most adopted in 2002, with little review since adoption
- Four need minor formatting revisions, but no substantive changes:
 - RPAs: Permitted Development Activities
 - RPAs: Buffer Area Encroachments
 - RPAs: Onsite Buffer Area Delineation
 - Exceptions
- *RPAs: Permitted Development Activities*
 - On pages 1, 2 and 5, spaces were added and periods deleted in 7 regulatory citations. Example: 9VAC10-20-130.1.a was revised to 9 VAC 10-20-130 1 a
 - On page 4 and 5, the citation for the Stormwater Regulations was updated from 4 VAC 3-20010 to 4 VAC 50-60.
- *RPAs: Buffer Area Encroachments*
 - On pages 1 and 2, spaces were added and periods deleted in 5 regulatory citations. Example: 9VAC10-20-80.B.5 was revised to 9 VAC 10-20-80 B 5.
 - On page 2, all but the first sentence in the last paragraph on this page was updated from information from 1996 to information from 2002. The updated information relates to riparian buffers and the Chesapeake Bay Program initiatives.
- *RPAs: Buffer Area Encroachments – Page 2 existing*

“In 1996 the Riparian Forested Buffer Initiative was adopted by the signatories of the Chesapeake Bay Agreement with the goal of restoring 2010 miles of riparian-forested buffers in the signatory states by the year 2010. In the time since that initiative began, Virginia has agreed to partner with the USDA to implement the Conservation Reserve Enhancement Program (CREP). This program seeks to provide financial assistance to farmers for the purpose of setting aside additional land area for vegetated buffers. CREP and the Riparian Forest Buffer Initiative, are just two large-scale programs designed to promote and increase the amount of vegetated buffers for water quality improvement. In conjunction with these programs, the Bay Act program seeks to preserve existing vegetated buffers for water quality protection.”
- *RPAs: Buffer Area Encroachments – Page 2 proposed*

“In 2002, signatories of the Chesapeake Bay Agreement met the goal of 2010 miles of restored riparian buffers by 2010, set forth in the 1996 Riparian Forested Buffer Initiative, eight years ahead of schedule primarily by partnering with the USDA to implement the Conservation Reserve Enhancement Program (CREP). In 2002 the goal was extended to 10,000 miles of additional buffers by 2010. To achieve the 2007 Chesapeake Bay Program’s Forest Land Protection Goal of 695,000 by 2020, the Virginia Department of Forestry developed a Forest Conservation Plan identifying strategies that will result in permanent protection of 135,000 forested acres within Virginia’s Bay watershed by 2012 and 315,000 acres by 2020.”

- *RPA: Onsite Buffer Area Delineation*
 - On pages 1 and 3, spaces were added and periods deleted in 4 regulatory citations. Example: 9VAC10-20-80.B.5 was revised to 9 VAC 10-20-80 B 5.
 - On page 1 under Purpose, the last sentence in the second paragraph was revised to delete references to nonexistent guidance documents and to reference the nontidal wetlands guidance document.
- *RPA: Onsite Buffer Area Delineation – Page 1 existing*

“For guidance on how to determine the onsite limits of RPA nontidal wetlands, tidal wetlands, and tidal shores, see *Onsite Delineation of Tidal Wetlands*; *Onsite Delineation of Nontidal Wetlands*; and *Onsite Delineation of Tidal Shores*.”
- *RPA: Onsite Buffer Area Delineation – Page 1 proposed*

“For guidance on how to determine the onsite limits of RPA nontidal wetlands see *Resource Protection Areas: Nontidal Wetlands*.”
- *Exceptions*
 - On pages 1, 2, 4 and 5, spaces were added and periods deleted in 8 regulatory citations. Example: 9 VAC 10-20-130.1.a was revised to 9 VAC 10-20-130 1 a.
 - On page 4 deleted the following sentence: “*For those localities that used administrative processes prior to March 2002, they must change their processes to meet the requirements of 9 VAC 10-20-150 C 2 by March 1, 2003.*” This sentence is no longer necessary as all 84 localities have adopted proper review processes.
- *Exceptions*
 - On page 4, the last paragraph was revised as follows: “For those localities that incorporate the Regulations into their local Zoning Ordinances, Chesapeake Bay *preservation provision* Preservation Act program exceptions may be considered ...”

- On page 4 the following sentence was revised: “*Several localities use their planning commission which considers the exception request as part of the plan of development review process.*” This sentence now reads: “Localities may also use a special board or the planning commission to consider the exception request as part of the plan of development review process.”
- *Exceptions*
 - On page 5, revised CBLAD to DCBLA in 2 instances
 - On pages 4 and 5, added several subheadings to provide better organization of the information. Subheadings are: Process for Reviewing Exceptions; Local Exception Review Body Options; and, Exception Tracking.
 - On page 5, revised paragraph relating to appeals of exception requests for clarification and to include information related to the 2008 Bay Act revision. Last sentence which read “The CBLAD staff is available to help localities examine this matter and arrive at the best solution for them” was deleted as all 84 local governments have adopted an exception process which has been reviewed by the Board.
- *Exceptions*
 - On page 5, the following sentence was revised: “*The decision as to how to best accommodate the review, action, and appeal of exceptions is truly dependent upon the circumstances of each locality.*” This sentence now reads: “The decision...circumstances of each locality, however, a 2008 revision to the Act requires a minimum 30 day period for an appeal when the appeal process is codified in a local ordinance.”

CBLAB Policy Committee met on June 15, 2009, and took the following action:

The Policy Committee recommended that the Chesapeake Bay Local Assistance Board adopt revisions to the four guidance documents as presented.

Mr. Davis asked if these revisions would be sent to the localities.

Mr. Smith said that staff would revise the documents and repost them on the agency website and Virginia Town Hall. Staff will also notify localities that changes have been made.

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board adopt revisions to the following guidance documents as presented by staff:

*Resource Protection Areas: Permitted Development
Activities
Resource Protection Areas: Buffer Area Encroachments
Resource Protection Areas: Onsite buffer Area Delineation
Exceptions*

SECOND: Mr. Evans
DISCUSSION: None
VOTE: Motion carried unanimously

Public Comment

There was no public comment.

Closed Meeting

Mr. Duncanson moved the following:

Mr. Chairman, I move that the Chesapeake Bay Local Assistance Board convene a closed meeting pursuant to §2.2-3711(A) (7) of the Code of Virginia for the purpose of consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, namely the pending litigation against the Board by Chesterfield County, styled *County of Chesterfield v. Chesapeake Bay Local Assistance Board*, Circuit Court of Chesterfield, Case No. CL09-515.

This closed meeting will be attended only by members of the Board. However, pursuant to § 2.2-3712(F) of the Code, the Board requests counsel, the Director of the Department of Conservation and Recreation (DCR), Joan Salvati, David Sacks, Adrienne Kotula and Ryan Brown to attend because it believes that their presence will reasonably aid the Board in its consideration of the topic that is the subject of this closed meeting.

SECOND: Ms. Harper
VOTE: Motion carried unanimously

Following the closed session, Mr. Duncanson moved adoption of the following:

WHEREAS, the CBLAB has convened a closed meeting on June 15, 2009 pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712(D) of the Code requires a certification by the Committee Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Chesapeake Bay Local Assistance Board hereby certifies that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

SECOND:

VOTE: Aye: Davis, Duncanson, Evans, Harper, Marten, Reed, Taylor,
 Whitehurst

No: None

Not voting: None

Compliance Evaluations

Mr. Sacks said that the Compliance Evaluation schedule affects the Policy Committee and the Board. He provided a quick overview of the intended schedule for the review of the revised structure and said that staff would like to have a work session with the Policy Committee on August 4th to discuss revisions to the approach for compliance evaluations. With a Committee work session in early August, that will enable discussions with localities to take place in August through early October.

Mr. Sacks said the intention would be to provide the Board with a full update at the September meeting.

Adjourn

There was no further business. Ms. Reed moved to adjourn. Mr. Whitehurst seconded.

The meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chair

Joseph H. Maroon
Director